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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,603	12/11/2001	Oswald Gasser	0475-0198P	4201
2292	7590	09/27/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			LEWIS, RALPH A	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

42

Office Action Summary	Application No. 10/009,603	Applicant(s) GASSER ET AL.	
	Examiner Ralph A. Lewis	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-13 and 16 is/are rejected.
- 7) ☐ Claim(s) 7,8,14 and 15 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02082002</u> . | 6) <input type="checkbox"/> Other: ____ |

Rejections based on 35 U.S.C. 112, second paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, the "preferably" limitation is not understood. Is the limitation a requirement of the claim or is it not.

Rejections based on Prior Art

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-6, 9, 10, 12, 13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Sterns et al (US 3,903,252).

Sterns et al disclose a gel material that is "deformable" that is to be spread on a patient's teeth as a "film" or in a dental tray (column 8, line 44). The gel material includes a dye or other coloring agent which selectively stains plaque formed on the teeth (i.e. a diagnostically useful additive that is locus specific) which leads to a

Art Unit: 3732

diagnostic result. In regard to claim 5, note examples 1 and 2 where the diagnostic additive comprise .55 wt%. In regard to claim 6, the Sterns et al gel material meets the broadly claimed "impression materials" limitation. In regard to claim 9, the Stearns et al method of applying plaque detecting gel material could be done before taking a picture image. All that is claimed is the process in preparation of images, with no actual imaging step claimed. In regard to claim 16, note the use of a dental tray (column 8, line 44) which would inherently give an impression in the gel material.

Claims 1-5 and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Kosti (US 4,459,277).

Kosti discloses a toothpaste material that forms a film when brushed on the teeth by a user that contains micro-encapsulated plaque disclosing dye. The capsules rupture when brushed on the teeth and stain the specific areas (locus) of the teeth that have plaque.

Allowable Subject Matter

Claims 7, 8, 14 and 15 are objected to as being dependent on a rejected base claim but would be allowable if rewritten in independent form to include all of the limitations of the claims from which they depend.

Prior Art


Applicant's information disclosure statement of February 08, 2002 has been considered and an initialed copy enclosed herewith.

Brilliant (US 3,309,274), Kashket (US 4,368,272), Shibuya et al (4,582,795), Rosenberg et al (US 4,976,951), Gathani (US 5,357,989), Moll et al (US 5,981,300), and Japanesse Patent 11-14624 are made of record.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(703) 308-0770**. Fax (703) 872-9306. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Kevin Shaver, can be reached at (703) 308-2582.

R.Lewis
September 21, 2004



Ralph A. Lewis
Primary Examiner
AK 3732